

MINUTES OF HARRISONBURG PLANNING COMMISSION
February 8, 2012

The Harrisonburg Planning Commission held its regular meeting on Wednesday, February 8, 2012, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: MuAwia Da'Mes, Judith Dilts, Alan Finks, Deb Fitzgerald, and Bill Jones.

Members absent: Charles Chenault and Henry Way.

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Jones called the meeting to order and determined there was a quorum with five of seven members in attendance. He then asked if there were any corrections, comments or a motion regarding the minutes from the January 11th 2012 Planning Commission meeting.

Dr. Dilts moved to approve the minutes from the January 11th Planning Commission meeting.

Mr. Finks seconded the motion.

Mrs. Fitzgerald abstained from voting because she was not in attendance at the meeting.

All voted in favor of approving the minutes. (4-0)

New Business

Special Use Permit – 883 Chicago Avenue (10-3-97 (9) Religious Use)

Chairman Jones read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, office, wholesale, or service functions. These areas are generally found along the City's major travel corridors and in the Central Business District of the City.

The following land uses are located on and adjacent to the property:

Site: Vacant mercantile building and accessory structures, zoned M-1

North: Across Chicago Avenue, single-family homes, zoned R-1

East: Vacant lot, zoned M-1

South: Industrial uses, vacant lot, and non-conforming single-family home, zoned M-1

West: City of Harrisonburg property and other industrial uses, zoned M-1

This is a request for a special use permit (SUP) per Section 10-3-97 (9) of the Zoning Ordinance to allow a religious use within the M-1, General Industrial District. If approved, The Church of God – Rayos De Esperanza intends to occupy a 4,800 +/- square foot, vacant building located on the site for their church services. The property is a 39,985 +/- square foot parcel that fronts along Chicago Avenue, at its intersection with Waterman Drive. The building would not provide housing facilities for the church.

The church has stated the congregation consists of approximately 50 people and they would provide seating for 60 persons. Based on the seating, 12 on-site parking spaces would be required. It appears the site is large enough to create new parking areas where necessary and there is an existing

open-ended, accessory building along the eastern property boundary which could be used for parking as well. Staff has pointed out to the applicants that the existing parking area located along Chicago Avenue is laid out such that vehicles must back into the public right-of-way and across the bike lane. Such parking does not conform to existing standards and, if approved, staff suggests conditioning the permit to not allow this parking as it currently functions. Staff would work closely with the applicant during the change of use process to ensure that all necessary parking and maneuvering requirements are met.

The applicant has been informed that if they receive approval of the requested SUP, they would need to apply for a change of use permit from the Building Division. This would require that all building code regulations be met for the proposed use and any other planned renovations.

Staff does not have any concerns with a religious use at this location. The Comprehensive Plan designates this corner of Chicago Avenue and Waterman Drive as Commercial and although zoned M-1, the industrial uses found along this corridor are not intensive enough that a church would not be compatible with the surrounding uses. Staff supports this application with the suggested condition that the existing off street parking along Chicago Avenue shall not operate in its current design and function.

Chairman Jones asked if there were any questions for staff.

Mr. Finks said I know that we are building sidewalks along Chicago Avenue in that area; will there be one on this side of the street?

Mrs. Banks replied no, the sidewalks would end at the intersection of Chicago Avenue and Rockingham Drive which is one block south.

Mr. Da'Mes said there are also plans for a round-a-bout at that intersection.

Mrs. Banks said yes, there are future plans for a round-a-bout; however, the proposed location of the round-a-bout is shifted a bit north towards the City owned property.

Mr. Fletcher said the current plans show the round-a-bout a bit north of the existing intersection. Therefore, this property potentially would not lose land.

Mr. Da'Mes asked whether consideration was given to not allowing entry and exiting onto Chicago Avenue, because of the amount of traffic and traffic flow in that location, and only allowing an entrance on Waterman Drive.

Mrs. Banks said traffic in this area was not a concern; the parking situation along Chicago Avenue was the real concern.

Mr. Fletcher said Public Works did not have any comments regarding the entrance. If any use went in this building, not just the church, staff would be telling them the exact same thing – the parking lot along Chicago Avenue cannot be used as it functions today.

Chairman Jones asked if there were any further questions. Hearing none, he opened the public hearing and asked if the applicant or applicant's representative would like to speak.

Mr. Dan Neher said he is here representing the applicants, Mr. and Mrs. Hillyard, who are present tonight. As well two members of the church are present if there are any questions. We certainly agree to abide by the conditions staff has proposed and we are here to answer any questions that you may have.

Chairman Jones asked if there were any questions for the applicants or their representative. Hearing none, he asked if there was anyone wishing to speak in favor of the request. Hearing none, he asked

if there was anyone wishing to speak in opposition of the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Dr. Dilts said in the letter from the applicant it states there are no future plans for growth and I am curious about that since churches generally want to grow.

Mrs. Banks said a member of the church or their representative may be better prepared to answer that question.

Chairman Jones re-opened the public hearing and asked if there was anyone with the applicant to answer the question.

Mr. Angel Echegoyin said he is the pastor of the church.

Dr. Dilts said your current congregation size is 50 and you only anticipate going to 60.

Mr. Echegoyin said yes that is correct. We do not have many established members and some may move, others stay, but the congregation stays between 50 and 60 persons.

Chairman Jones asked if there were any further questions. Hearing none, he closed the public hearing and asked Planning Commission for discussion.

Dr. Dilts asked staff if the building was large enough to handle 50 or 60 persons.

Mr. Fletcher replied to the best of our knowledge it is; but, we have not had a building inspector perform a walk-through.

Mrs. Banks said the applicants are currently working with an architect because their building plans for the change of use would need an architect's seal. The architect would establish the occupancy load for the building.

Dr. Dilts said if the congregation was to grow would there be enough land that there could be sufficient parking for the building?

Mrs. Banks replied I believe there is enough land for parking. However, if their church were to grow and more portable seats were brought in to accommodate the growth, there is not a mechanism that would bring them back to zoning so that we can ensure all the parking is met. We let them know the requirements and hopefully as they grow they would provide more parking on site.

Mr. Fletcher said if more space is needed for parking they could demolish the out buildings to make sufficient space. This parking requirement is an older regulation and most churches govern themselves when it comes to parking.

Chairman Jones said it appears to me that the parking issue along Chicago Avenue would be easy to rectify.

Mr. Finks moved to recommend approval of the request with the staff recommended condition.

Mrs. Fitzgerald seconded the motion.

Chairman Jones said there is a motion on the table and a second. He then asked for a voice vote on the motion.

All voted in favor of the motion to recommend approval with the one condition (5-0).

Chairman Jones said this will move forward to City Council on March 13th 2012.

Special Use Permit – 301 West Market Street (10-3-40 (7) Occupancy up to 4 persons)

Chairman Jones read the request and asked staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Neighborhood Residential. This designation states that this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. These are older neighborhoods, which can be characterized by large housing units on small lots.

The following land uses are located on and adjacent to the property:

- Site: Undeveloped lot, zoned R-2
- North: Across West Market Street, Graham Plastics, zoned M-1 and dwelling units and professional offices, zoned R-3
- East: Across Academy Street, duplex dwelling unit, zoned R-3
- South: Across undeveloped alley, single family dwelling, zoned R-2
- West: Detached single family structure with legally established boarding and rooming house, zoned R-2

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (7) of the Zoning Ordinance to allow occupancy up to four persons within a single family detached dwelling that he plans to build on the R-2 zoned lot. The undeveloped property is located in the 300 block of West Market Street at its junction with Academy Street. If approved, one off-street parking space per tenant must be provided.

Before getting into the details of the request, occupancy restrictions of the R-2, Residential District should be clearly understood as there is often a misconception as to how they are regulated. The R-2 zoning district shares the same occupancy restrictions of the R-1, Single Family Residential District. Owner-occupied single family dwellings may include rental of space for occupancy by not more than two persons and nonowner-occupied single family dwellings may include rental of space for occupancy by not more than one person. The applicant noted he will not reside at the planned single family detached dwelling; therefore, by-right he could rent to an individual or a family (regardless of the number of individuals in the family) plus one other person.

The request in this application is similar to the occupancy permitted by-right in the R-3 zoning district, where dwelling units may be occupied by a family or not more than four persons. This occupancy is utilized by many of the student housing complexes in the City.

As shown in the submitted survey, the property is 8,768 square feet; therefore residentially, the lot has enough lot area to build only a single family detached dwelling (duplex structures require at least 11,000 square feet). The dimensions and the location of the lot allow for two relief mechanisms in the Zoning Ordinance. First, the lot is less than 60-feet in width; therefore interior side yard setbacks may be reduced to five feet. Secondly, Section 10-3-112 of the Zoning Ordinance specifies that corner lots shall provide a setback equal to the required front setback for all yards adjoining a public street—meaning a 30-foot setback shall be applied from both West Market Street and Academy Street. However, this section goes on to note that setback regulations shall not reduce the buildable width of a lot to less than 50 percent, thus the setback from Academy Street can be reduced to approximately 28 feet. The submitted house plans illustrate the house to be 28 feet in width. Staff has already expressed concern to the applicant about whether or not the planned house could fit in the buildable area. The applicant believes he can make the proper adjustments to accommodate a structure within the buildable width.

This neighborhood—bounded by West Market Street, South High Street, West Bruce Street, and South Dogwood Drive—includes a mix of residential units with single family homes, duplexes, and multi-family units. The neighborhood includes R-2 and R-3 zoned property; all parcels to the west of Academy Street are zoned R-2 and all parcels to the east of Academy Street are zoned R-3. There is also a mix of owner-occupied dwellings and nonowner-occupied, or rental, dwellings. The neighborhood, as bounded and described above and based upon the City's GIS information, may be divided at approximately 42.5% owner-occupied units and 57.5% rental units. One comes to this conclusion by analyzing the tax map number and designated address for the parcel and compares that data with the address to where the tax card is mailed. If the addresses match, then one could deduce the property is owner-occupied. (Staff, however, does know of instances where that method of analysis is inaccurate.) Understanding how the occupancy restrictions work for this area, there is no good way of knowing the exact levels of occupancy. If the R-2 properties have occupancy other than permitted by right, they are either non-conforming or illegal. It should be understood the Zoning Ordinance was amended in 1998 to require a SUP for occupancy to exceed the level permitted by-right. Before this time, occupancy in the R-2 and R-3 district was the same.

There are three R-2 properties in this neighborhood that staff is certain can have occupancy other than permitted by right. The first property is the adjacent dwelling to the west at 323 West Market Street. This property is classified as a boarding and rooming house and has been used as such since 1989 when R-2 zoned properties allowed boarding and rooming houses by-right. Today, boarding and rooming houses are permitted only in the R-3 and M-1 districts and only by SUP. The second property is a single family detached dwelling located at 375 West Bruce Street, which in 1999 received the same SUP being requested in this application. The third property is located at 433 West Market Street (one block to the west of the subject property), which in 2000 also received approval of the same SUP. This property includes a duplex with permission for three occupants in one unit and four occupants in the other unit.

The Comprehensive Plan designates this neighborhood as Neighborhood Residential, which means this type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Further, infill development and redevelopment must be designed so as to be compatible with the existing character of the neighborhood. Given the mixed residential nature in this neighborhood, one *could* argue a multi-tenanted single family structure is compatible with the existing character of the neighborhood. Staff, however, does not promote the furthering of this use in this area of the City.

In addition to this area's Neighborhood Residential land use designation, which most closely relates to an R-2 zoning district, the Comprehensive Plan also designates this area within a Neighborhood Conservation Area. As specified in Chapter 4 of the Plan, such neighborhoods may: be rich in historic and cultural fabric; face challenges to reinvestment and rehabilitation; confront preservation issues; suffer from poorly maintained, deteriorating, or vacant homes and spot conversions of single family homes to apartments (often for students); contain older deteriorating apartment buildings; face encroaching commercial development or inappropriate conversion of houses to non-residential uses; and/or have street traffic stress. The Comprehensive Plan recommends that each of the designated Neighborhood Conservation Areas establish a community-based plan to address the related issues, and although such a plan for this neighborhood has not been developed, staff believes the designation alone gives credence to deny the SUP request. Secondly, approving such a request could be precedent setting. With so many rental properties already within this area, approving this request sets up the opportunity for other rental properties to expect to exceed the by-right occupancy.

Staff believes recommending approval of this request does not conform to the Comprehensive Plan and recommends denial of the request.

If there is a desire to approve the SUP, staff recommends the following conditions.

1. All off-street parking spaces shall not be located between the principal building and the public streets.
2. The parking spaces shall be screened utilizing the mechanisms as specified in the table within Section 10-3-48.6 (b) of the Zoning Ordinance. Screening abutting the alley shall follow the same rules for screens abutting a street. (The table is shown below.)

Screen Abutting Street	Screen Abutting Adjacent Lot
4-foot high masonry wall	6-foot high masonry wall or solid wood fence
Or	Or
Evergreen hedge of 4-foot high (ultimate height) shrubs or trees planted a minimum of 5 feet on center so as to form a dense screen	Evergreen hedge of 6-foot high (ultimate height) shrubs or trees planted a minimum of 5 feet on center so as to form a dense screen

Chairman Jones asked if there were any questions for staff.

Dr. Dilts said if the width of the land is 56 feet, the applicant has to have a five-foot setback on the interior side lot line and a 28-foot setback from Academy Street?

Mr. Fletcher said the formula is a bit confusing; starting from the interior side lot line, you go in five feet, because they get a reduction for a lot less than 60-feet in width. Secondly, you cannot reduce the buildable width to less than 50 percent of the lot width; so you take one-half of 56 feet, which leaves you with 28 feet of buildable area. The remainder, 23 feet, is the setback from Academy Street.

Mrs. Fitzgerald said the front setback is a residual of the equation.

Dr. Dilts said should we recommend this, staff is suggesting a condition that the parking not be located between the house and West Market Street or Academy Street.

Mr. Fletcher said the clearest way to state it is that parking cannot be located on the corner, and it cannot be between the dwelling and West Market Street or Academy Street. Therefore, it basically can be located in the rear of the dwelling off of the alley.

Dr. Dilts said do the other lots along West Market Street have parking in the rear?

Mr. Fletcher replied I would say that a majority of them do; some of them may have driveways in the front, maybe a parking space too. You can see from the aerial photo that some parcels have driveways that enter from West Market Street and go straight through to the alley. What we are looking for with this condition is aesthetics. If you look across Academy Street you have the situation where there is a parking lot right on the corner, you do not have the building next to the street.

Mrs. Fitzgerald said the adjacent dwelling that appears is borrowing this lot for parking; where is their parking supposed to be located.

Mr. Fletcher said directly behind their house, entering from the alley.

Chairman Jones asked if there were any further questions for staff. Hearing none, he opened the public hearing and asked the applicant or the applicant's representative to speak.

Mr. John Monger, IV, said he was one of the owners of this property. A bit of history about the lot; it used to house a four unit apartment building. There were two, two-person units and two, one-person units; so, it did house six persons before the widening of West Market Street. The apartment building was torn down to make way for the widening of the street.

I did a bit of research on the Harrisonburg GIS system and I found a couple other lots that are multifamily. I would like to focus more on the road frontage of West Market Street as opposed to the entire neighborhood. I feel that this lot has more characteristics of a road frontage lot, than it does of a neighborhood lot. If you look along the same side of the street there are a total of 18 lots, not including the requested lot. There are five multi-family lots within that frontage; again, this information is according to the City's GIS. There are 12 that are single-family and only seven are owner occupied; that is only 38 percent.

If you look at the surrounding properties from my lot you have a multifamily, rooming & boarding house next door; across Academy Street is a duplex; across West Market Street is an industrial parking lot with R-3 uses to the east. If you look at the situation of that lot I feel it is a bit different from the rest of the neighborhood, surrounded by houses.

Along the northern side of the West Market Street corridor the occupancy is even worse. There are only five owner occupied homes in this stretch. Five lots are zoned M-1, Industrial; there is an R-3 commercial lot for a business; another is a multifamily home; and there are 12 single-family detached, with only five being owner occupied. Many of the single-family homes along this area are non-conforming and one I know of specifically because it is owned by the same JJCARMON that I am part of. Many of them are "grandfathered" in under the old R-2 zoning before it changed to only two persons.

If we narrow things down and look just at the corner lots facing West Market Street, two of them are multifamily, one is a single-family rental, and only two are actually owner occupied. Therefore, I feel like my request is not out of the characteristic of this neighborhood. The lot was, before its current usage as a parking lot, multifamily housing.

To address the current parking issue, I believe people are parking here because it is a convenience to the front door of the house; but, there is ample parking in the rear. That is where I would propose to put my parking lot as well, off of the alley in the rear of the dwelling. The house that I submitted with the request is an example of what I would like to do. I am working with an architect now and I will probably shrink the footprint down to 27 feet so that I will have some wiggle room.

In summary, if you look at the surroundings and the characteristics of that lot I feel that it would be very difficult to have a single-family, owner occupied home there or even a rented single-family home there. I am trying to take a small, barren lot and improve the real estate, similar to what I did last year at 270/272 West Bruce Street. It was an old boarded up house, I completely gutted it and renovated it; now it is one of the nicest houses on the block.

Chairman Jones asked if there were any questions for Mr. Monger.

Mr. Da'Mes asked what the square footage of the proposed dwelling was.

Mr. Monger replied just under 2,000 square feet and again that was with the plan that was submitted with the application. Once I shrink the structure to 27 feet in width, the square footage would probably be closer to 1,800 square feet. I may lengthen the structure a bit too. I intend to have a surveyor stake the boundary and footers, because it is a small lot and everything has to be very on spot when you begin to build.

Mr. Da'Mes said do you see any problems with what staff is recommending as a condition for the parking and screening?

Mr. Monger said no, I feel there should be ample space in the rear for parking. Currently there is a row of trees adjoining the interior lot line, so there is already some screening in place. I always put shrubbery in. I feel if you do a project like this and do not finish it with shrubbery, it does not look good.

Chairman Jones asked if there were any further questions. Hearing none, he asked if there was any one present wanting to speak in favor of the request. Hearing none, he asked if there was any one present wishing to speak against the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion.

Mr. Finks said I certainly respect Mr. Monger's desire to do something with this property. My problem is what we have allowed to happen here. For the last eighteen months we have mulled over and had multiple meetings regarding our Comprehensive Plan. Now here we are considering this type of thing. Did we not cover this type of thing? Obviously, we did not.

As many of us are aware there is the need for a new school. Here we are talking about an apartment that will probably wind-up having children in it. After this one there will probably be another one and so on, until eventually we will be building another new school. Is this a problem, perhaps it just means higher taxes. I for one have always been in favor of doing something with an impact fee, but again that was not discussed within the Comprehensive Plan review. Now we have this situation. I feel sooner or later we have to address this; preferably sooner rather than later.

It is not Mr. Monger's fault that he wants to do this, but as it all mounts together someone is going to have to take the blame. I really do think we need to look at this. Of course this is just the first example we have had since approving the Comprehensive Plan; but these are things we are going to be looking at. Is this the way we want to go – no impact fees, nothing at all, let the chips fall where they may. We had a chance to do something when we were working on the Comprehensive Plan.

Mrs. Fitzgerald said we have not done anything like this as a body since 2000, is that correct?

Mr. Fletcher replied that is correct.

Mrs. Fitzgerald said so it has been twelve years. There is a sense I get here that part of the question before us is – is this neighborhood effectively past the tipping point? Perhaps it does not show up on paper but are they past that point? Do we hold on to what the Comprehensive Plan says about this being a neighborhood, or do we recognize what the applicant seems to be saying that the neighborhood has already tipped past. It seems to me that in our discussions last time with the Comprehensive Plan we argue that this neighborhood has not and we should continue to push back and retain the neighborhood cohesion.

Dr. Dilts said I think that is right, it is a question at this point of what do you want the neighborhood to be. We had a lot of discussion with the Comprehensive Plan and this area was zoned R-2 for a reason. You have to draw the line somewhere.

Chairman Jones asked when West Market Street was widened.

Mrs. Turner replied I believe it was around 1995.

Chairman Jones said I do not recall exactly when it was, it may have been during some of the Comprehensive Plan discussions, but we did have a brief discussion regarding impact fees.

Mr. Finks said I think we have had several brief discussions on impact fees; but, if we are going to go with fees, we need to plan for it now.

Chairman Jones said another point that I would like to bring up is our “Gateways” into the City as shown in the Comprehensive Plan. This is one of our Gateways; how do we want these Gateways to appear?

Mr. Fletcher replied that Gateways are speaking mostly about the viewscape, signs, landscaping, and things you are seeing as you travel. I cannot recall if reference is given to parking lots or things like that; but it is more about things you see as you are coming in, not necessarily the uses along the Gateway.

Chairman Jones said it is more aesthetic.

Mrs. Turner said with the discussion regarding impact fees, I do not know if that is being made as an argument for or against this request; but, regardless, I am not sure you could charge an impact fee for this exact scenario. This is an existing lot; it is not a new subdivision with new lots for houses that could not go in otherwise. I hope this may clear things up a bit from the earlier discussion.

Mr. Da’Mes said I have to take into consideration what Mr. Monger is saying about the character of distinguishing this from other neighborhoods, because it does front along West Market Street. When you look at the percentages and ratios in terms of rental units along West Market Street and the character of the area it is not that far off. Is there any way we can condition this to the character of this particular house, because to me the house plan fits in the character of the corridor. Whether it is for non-owners or not, the house is not really part of the neighborhood. I see those four occupants as someone who comes off of West Market Street, parks, stays, and leaves the next day; not really part of the neighborhood, not affecting the neighborhood. By saying no to the request we are basically saying leave this lot empty; what is best for this lot.

Dr. Dilts said I believe we are saying yes to the idea that there is a reason for this being a neighborhood conservation area and residential R-2 district. At some point you either take a stand and say from this point on, everything we approve will be in character with a residential neighborhood. Or you say from this point on we are just going to let it be whatever it is.

By your argument you are essentially saying if something sits on West Market Street it does not have to be a single-family home.

Mr. Da’Mes said however, this is a special use and every special use comes before us for consideration because of its special circumstances. This one might have its merits given the proximity to R-3, to M-1, and the Market Street corridor.

Mrs. Fitzgerald said then when do you draw the line? Is it spot zoning.

Chairman Jones said that is what I am thinking and I am not in favor of spot zoning. However, there are other parcels in this established neighborhood of the same type use. With that being said, I am also a believer in maintaining the integrity of the existing older neighborhoods that we have. I believe this is something we discussed during the Comprehensive Plan review – trying to preserve the integrity of some of our older neighborhoods. I understand that there are some inconsistencies with the uses in this group of parcels, but I am at the point of saying we are not going to allow this

to continue. If nothing else, the folks that live in this neighborhood as owner occupiers have the right to maintain the integrity of their neighborhood the way it was when they moved in to it.

Mr. Da'Mes said yet they are not here tonight and they did not write in to speak their opposition.

Chairman Jones agreed with that. But what about those who do not know what is happening on this parcel, they do not get a newspaper or drive by and see the sign. I would hate to hear from them after the fact.

Mr. Finks said the R-3 zoning does not exactly tell the whole truth here. R-3 was an entirely different thing until about a few months ago when we made a big change to that zoning. R-3 was a very lucrative zoning classification.

Mr. Fletcher said to be perfectly clear, we did have two phone calls regarding this. One happened to be a passerby that wanted to know what a special use permit was. The other was from Graham Plastics, as an adjacent property owner, wanting to know what to report back to their Board as to what the special use was about. As for the comment about R-3, the properties that are zoned R-3 are across Academy Street and if an R-3 property wanted an apartment they would have to request a special use permit. It did not affect occupancy in the R-3; occupancy for dwellings in R-3, old and new, is still up to four unrelated persons.

Mrs. Turner said another item to point out is besides the newspaper advertisement, the sign in the yard, and information on our website, we do notify in writing the directly adjacent property owners, which includes across the street. So some people in the neighborhood do actually receive a letter in the mail.

Chairman Jones asked if there were any further questions for staff or further discussion.

Dr. Dilts moved to recommend denial of the special use permit request.

Mrs. Fitzgerald seconded the motion.

Chairman Jones said there is a motion to deny and a second. He then called for a roll call vote on the motion.

Commissioner Fitzgerald – yes.

Commissioner Finks – yes.

Commissioner Dilts – yes.

Commissioner Da'Mes – yes.

Chairman Jones – yes.

Chairman Jones said the motion to deny passes (5-0). This request will move forward to City Council on March 13th 2012.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said proactive zoning targeted the Northfield sector of the City, where they found thirteen violations consisting of inoperable vehicles and discarded materials. Next month the Zoning inspectors will be inspecting the Purcell Park Area.

Other Matters

Mr. Fletcher said I have two items to discuss. First is an update about telecommunications. We have done quite a bit of research and have some items for consideration, but we have a question for Planning Commission. Most of the things we are looking at are more regulatory; but is it a desire to look at mechanisms that are less regulatory? We are looking at things like screening, how to make things as invisible as possible, co-locations, and things along these lines. Is there a desire to lessen the restrictions on telecommunications?

Chairman Jones said I do not know that lessening is really what I was thinking of. I know that under the current guidelines we go by we consider it as we do a flag pole, we call it a structure. I do not know if that is wrong; but, I think we could better define what these things are. To me the hospital is a structure.

Mr. Fletcher said the Zoning Ordinance defines the difference between structure and building and sometimes they are considered the same. A structure is something that takes space on property and may or may not be habitable. A building is the same; however, it is habitable. A building is a structure, but not all structures are buildings.

Mr. Fletcher continued saying we have a good start on telecommunications, and we probably will not update you every month. This will take some time.

Mr. Da'Mes said I am somewhat mixed on the regulatory thing. Obviously, you have to have some guidelines in place; but, every time we run into one of these we ask – are there better alternatives and have they been exhausted. Perhaps we should build something in an ordinance that states all efforts should be exhausted before placing a 125-foot monopole in the middle of 30-foot buildings.

Mr. Fletcher said yes, some of the items that we have already made note of are giving more verification that all those attempts have been made. Therefore, an applicant would have to prove to us in writing that this has been attempted. There are a lot of model ordinances out there from other states and some of it is applicable to us. Thank you for your input and we will continue to move forward with this.

Secondly, Planning Commission is going to see the proposed Parking Lot Landscaping Ordinance again next month. Reason being, there are some minor tweaks that we would like to make and a bigger issue that we have come across. There is an interpretation issue which made sense to us; however, it became evident to us that it was not clear to others. We are therefore proposing an amendment to the existing parking lot definition. If it should be approved, it will affect some of the other items within the ordinance as proposed, so we need to make those slight tweaks. Therefore, the ordinance is not moving forward to City Council; but it is being re-advertised and brought back to Planning Commission. We will provide you all the language again, along with the changes. We also have three other sections of the Zoning Ordinance which we are proposing amendments to, so you will see those next month as well.

Mrs. Fitzgerald said there is no tour next month for Planning Commission.

Mr. Fletcher replied there is no tour. No other applications were submitted.

Mr. Da'Mes asked about the Pear Street agenda items.

Mr. Fletcher said yes, the Pedcor requests were left on the agenda because they were advertised; but, the applicants withdrew the requests completely. We kept it on the agenda in case anyone showed up regarding the newspaper advertisement.

Chairman Jones asked if there was any further discussion.

Mr. Da'Mes said he would like to talk about these signs in the median and on right-of-way. I have called businesses on some of them and told people they need to take those signs down; but, they are everywhere. They are all over Main Street and East Market Street. My feeling is once you allow a few others will start doing it as well.

Mr. Fletcher said it is not that we are allowing it, businesses just keep doing it and staff cannot keep up with it. If they are in the median Public Works will remove the signs.

Dr. Dilts asked if there was a fine for the illegal signage.

Mrs. Turner said these signs are on public property; they are not like someone advertising illegally on their own property where we can inform them they are in violation. They are on City property and we as the property owner have the violation. We have asked the City Attorney about this numerous times and he says because we do not know who put those signs there we cannot accuse someone. We do not know if the business authorized the signs to be placed there or did someone just stick them there. We can ask the City Attorney about this again.

Mr. Da'Mes said yes.

Mrs. Turner said Public Works has said that in the past they have picked some signs up and have charged a fee for picking them up. I do not know how often this has been done.

Dr. Dilts said the Little Caesars Pizza guy standing in the median, could he personally be picked up for a violation.

Mrs. Turner said it would be very difficult.

Chairman Jones said the state code covers issues of signage on public right-of-ways, and most localities through action of their governing bodies have adopted the State Code and it does make it illegal to do this.

Mr. Fletcher said signs are very difficult to enforce. You also have the large banner signs that businesses just roll off the roof top during the time of the sale and then roll them back.

Chairman Jones said the folks in Fairfax have two or three crews that spend their entire day riding around the County picking up all the illegal signage.

Mrs. Banks said I believe those folks are part of a volunteer program. We, in the City, could have a person working full time that did nothing but regulate signage.

Dr. Dilts said if you continue to remove their signage one would think it would get expensive for them to replace and they would discontinue doing it.

Mrs. Banks said our local sign companies are more than happy to work with businesses on this, knowing that it is not allowed by our ordinance.

Chairman Jones said perhaps we should shorten the 30-day compliance time.

Staff said that the sign ordinance was amended to a 10-day time frame and made it a misdemeanor.

Chairman Jones said I think 48 hours would be sufficient for a business. Ten days seems excessive.

Dr. Dilts agreed.

Mrs. Turner said another thing that perhaps we could do is something like we do with zoning violations. When we write a letter about an inoperable vehicle we add a sentence stating that if you have another inoperable vehicle in the next couple of months the City will not notify you, we will simply take you to court. Perhaps we could do something along the lines of this with signs too. However, I would probably want to discuss this with the City Manager first, because I do not believe your concerns about all these signs are universally shared by other people on governing bodies.

Dr. Dilts asked if we (Planning Commission) are allowed to go around town and pick up this type of signage in public right-of-way.

Mrs. Turner said there are multiple reasons why you should not go around picking up these signs. The City could not say you are authorized to do so because there are some questions with liability. If you were injured on the City right-of-way while doing it or if you damage private property while doing it the City is not going to say you have authorization. I have asked the City Attorney about having a citizen's volunteer program like Mrs. Banks said Fairfax does, and he did not recommend for us to pursue that idea.

Mrs. Fitzgerald said from what you are saying there is not a completely unanimous idea that these signs are all that bad.

Mrs. Turner replied I think the ones we started talking about, the ones within the median, are. But, I am not sure that I would go as far as saying banners, streamers, signs on private property are viewed as bad.

Adjournment

The meeting was adjourned at 8:30 p.m.

Chairman William L. Jones, Jr.

Secretary, Alison Banks